

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

THE UNITED STATES for the use and benefit)
of METROPOWER, INC. D/B/A)
MACON POWER,)
)
Plaintiff)
)
v.) Case No.:
)
LEEBCOR SERVICES, LLC and)
THE HARTFORD FIRE INSURANCE)
COMPANY)
) **JURY DEMAND**
Defendants.)
)

COMPLAINT

COMES NOW, Plaintiff MetroPower, Inc. (“MetroPower”) and files this Complaint against the Defendants Leebcor Services, LLC (“Leebcor”) and The Hartford Fire Insurance Company (“Hartford Fire Insurance”).

1.

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and the provisions of the Miller Act, 40 U.S.C. § 3133(b)(3)(B). The Court has pendent jurisdiction and supplemental jurisdiction over the state law claims alleged in this Complaint pursuant to 28 U.S.C. § 1337.

2.

The Contract at issue was to be performed in Shelby County, Tennessee. Venue, therefore, lies in the United States District Court for the Western District of Tennessee pursuant to 40 U.S.C. § 3133(b)(3)(B) and 28 U.S.C. § 1391(b)(2).

3.

MetroPower is a Georgia corporation with its principal place of business in Albany, Georgia.

4.

Leebcor is a Virginia limited liability company with its principal place of business in Williamsburg, Virginia and may be served through its registered agent, Corporation Service Company, 2908 Poston Avenue, Nashville, TN 37203-1312.

5.

Hartford Fire Insurance is a Connecticut corporation with its principal place of business in Hartford, Connecticut and may be served through the Insurance Commissioner, Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, TN 37243-1204.

STATEMENT OF FACTS

6.

On or about April 5, 2013, Leebcor contracted with the Department of Navy on a federal project relating to the design and construction of a 30,128 square feet Marine Corps Reserve Training Center (MCRC) and adjacent Vehicle Maintenance Facility (VMF) in Millington, TN under Project Number N40083-13-C-0019 (the “Project”).

7.

As required by the prime contract and the Miller Act, Leebcor obtained a Miller Act payment bond (the “Bond”) from Hartford Fire Insurance. A copy of the Bond is attached hereto as Exhibit A. Under the terms of the Bond, Hartford Fire Insurance agreed to be bound “joint and severally” with Leebcor to make payment to all persons having a direct contractual

relationship with Leebcor or to any subcontractor of Leebcor for furnishing, labor, materials, or both in the prosecution of the work required by Contract No. N40083-13-C-0019, in the event Leebcor failed to make prompt payment to such persons.

8.

Leebcor and MetroPower executed a subcontract with an effective date of March 17, 2014 which required MetroPower to furnish labor, materials, and equipment for electrical work on the Project (the “Subcontract”). A copy of the Subcontract is attached hereto as Exhibit B.

9.

MetroPower last furnished labor to the Project on April 17, 2015. MetroPower fully performed its obligations under the Subcontract.

10.

The original and final subcontract price was \$1,110,307.00.

11.

Leebcor has only paid MetroPower \$955,252.00 for MetroPower’s work under the Subcontract leaving a balance owed of \$155,055.00, exclusive of interest.

Count I

Breach of Contract

12.

MetroPower repeats and realleges paragraphs 1 through 11 above as though fully set forth in this claim.

13.

Leebcor has breached the Subcontract by failing and refusing to pay MetroPower in full for labor, materials, and equipment furnished in the performance of the work required by the Subcontract.

14.

MetroPower has suffered damages as a direct and proximate result of Leebcor's breach of the Subcontract.

Count II

Miller Act Payment Bond

15.

MetroPower repeats and realleges paragraphs 1 through 14 above as though fully set forth in this claim.

16.

MetroPower provided written notice of its claims and demand for payment to Leebcor on June 30, 2015 and again on March 25, 2016. Despite MetroPower's demands, Leebcor has refused to pay MetroPower's claims.

17.

Hartford Fire Insurance is obligated, pursuant to the Bond, to pay MetroPower for labor, materials, and services furnished in MetroPower's performance of the work and for which Leebcor has failed to make payment.

18.

Hartford Fire Insurance has failed to fulfill its obligations under the Bond to pay MetroPower for labor, services, and materials furnished in MetroPower's performance of the work and for which Leebcor has failed to make payment.

19.

MetroPower is entitled to payment from Hartford Fire Insurance pursuant to the Miller Act, 40 U.S.C. § 3133.

Count III

Attorneys' Fees

20.

MetroPower repeats and realleges paragraphs 1 through 19 above as though fully set forth in this claim.

21.

Article 14 of the Subcontract states, "The prevailing party in any dispute shall be entitled to a reasonable sum of attorneys' fees (including those incurred prior to the action being filed), court costs and any costs incurred in enforcing a judgment or settlement."

22.

MetroPower has incurred and will continue to incur attorneys' fees and costs relating to this dispute. In the event MetroPower prevails in this lawsuit, it will be entitled to an award of these fees and costs.

JURY DEMAND

23.

MetroPower repeats and realleges paragraphs 1 through 22 above as though fully set forth in this claim.

24.

MetroPower demands a trial by jury pursuant to Fed. R. Civ. P. 38(b).

WHEREFORE, MetroPower prays for:

1. A trial by jury;
2. Damages in an amount of \$155,055.00 plus interest;
3. Costs of suit incurred herein;
4. Reasonable attorneys' fees; and
5. Such other and further relief as the Court may deem just and proper.

Dated this 14th day of April, 2016.

Respectfully submitted,

s/Luke P. Cantrell
Luke P. Cantrell (TN #31356)
BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, PC
First Tennessee Building
165 Madison Avenue, Suite 2000
Memphis, TN 38103
Tel.: (901) 577-8188
Fax: (901) 577-0835
lcantrell@bakerdonelson.com

Eric L. Hurst (*pro hac vice* motion to be submitted)
HURST & SAWYER LLC
303 Peachtree Street, NE
Suite 4340
Atlanta, GA 30308
Tel.: (678) 524-0769
eric.hurst@hurstandsawyer.com

Attorneys for MetroPower, Inc. d/b/a Macon Power